

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN CIVIL LIBERTIES UNION,
and AMERICAN CIVIL LIBERTIES
UNION FOUNDATION,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY,
CENTRAL INTELLIGENCE AGENCY,
DEPARTMENT OF DEFENSE,
DEPARTMENT OF JUSTICE, and
DEPARTMENT OF STATE,

Defendants.

No. 13 Civ. 9198 (AT)

DECLARATION OF JONATHAN MANES

I, Jonathan Manes, pursuant to 28 U.S.C. § 1746, hereby declare:

1. I am a supervising attorney at the Media Freedom and Information Access Clinic (“MFIA Clinic”), which represents Plaintiffs American Civil Liberties Union and American Civil Liberties Union Foundation (“ACLU”) in this action concerning Freedom of Information Act (“FOIA”) requests that seek records from the National Security Agency (“NSA”), Central Intelligence Agency (“CIA”), Department of Defense (“DOD”), Department of Justice (“DOJ”), and Department of State (“State”) regarding their EO 12333 implementing regulations, formal training materials, official authorizations of surveillance programs, implementing regulations, and formal legal opinions addressing surveillance under EO 12333 that implicates U.S. persons.

2. I am an attorney licensed to practice law in the State of New York and the State of New Jersey. I am admitted to the bar of this Court.

3. I submit this declaration in support of the ACLU's cross-motion for partial summary judgment and in opposition to Defendants' motion for partial summary judgment.

4. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiffs' Index of Contested Documents.

5. Attached hereto as **Exhibit B** is a true and correct copy of John C. Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, Memorandum for the Attorney General (Nov. 2, 2001) ("OLC 8").

6. Attached hereto as **Exhibit C** is a true and correct copy of Letter from John C. Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, to Judge Colleen Kollar-Kotelly, U.S. District Court for the District of Columbia (May 17, 2002) ("OLC 9").

7. Attached hereto as **Exhibit D** is a true and correct copy of Office of Legal Counsel, Memorandum for the Attorney General, *Re: Review of the Legality of the STELLAR WIND Program* (May 6, 2004) ("OLC 10").

8. Attached hereto as **Exhibit E** is a true and correct copy of excerpts from Department of Justice, Office of the Inspector General, *A Review of the Department of Justice's Involvement with the President's Surveillance Program* (July 2009) ("OIG Report"), which is included in Offices of Inspectors General of the Department of Defense, Office of Director of National Intelligence, Department of Justice, Central Intelligence Agency, National Security Agency, *Report on the President's Surveillance Program* (July 10, 2009).

9. Attached hereto as **Exhibit F** is a true and correct copy of Office of General Counsel, Memorandum for the Deputy Chief of Staff, *Sharing of 'Raw Sigint' Through Database Access* ("NSA 28").

10. Attached hereto as **Exhibit G** is a true and correct copy of Kenneth L. Wainstein, Assistant Attorney General, National Security Division, *Proposed Amendment to Department of Defense Procedures to Permit the National Security Agency to Conduct Analysis of Communications Metadata Associated with Persons in the United States* (Nov. 20, 2007) (“Wainstein Memo”), obtained via *Justice Department and NSA Memos Proposing Broader Powers for NSA to Collect Data*, Guardian, June 27, 2013, <http://bit.ly/1XJcRmy>.

11. Attached hereto as **Exhibit H** is a true and correct copy of Assistant General Counsel, Defense Intelligence Agency, “DoD Humint Legal Workshop: Fundamentals of Humint Targeting” (“DIA V-4”).

12. Attached hereto as **Exhibit I** is a true and correct copy of *Fiscal Year 2012 National Clandestine Service Report to HPSCI and SSCI on Executive Order 12333* (2012) (“CIA 12”).

13. Attached hereto as **Exhibit J** is a true and correct copy of National Security Agency, Memorandum for the Chairman, Intelligence Oversight Board, *Report to the Intelligence Oversight Board on NSA Activities—Information Memorandum* (Mar. 4, 2013) (“NSA 79”).

14. Attached hereto as **Exhibit K** is a true and correct copy of Inspector General, Central Intelligence Agency, *Compliance with Executive Order 12,333: The Use of [Redacted] Collection [Redacted] from 1995-2000* (Aug. 7, 2002) (“CIA 10”).

15. Attached hereto as **Exhibit L** is a true and correct copy of Memorandum for the Secretary of Defense, *Classified Annex to Department of Defense Procedures Under Executive Order 12,333—Action Memorandum* (Apr. 4, 1988) (“NSD 94-125”).

16. Attached hereto as **Exhibit M** is a true and correct copy of National Security Agency, Procedures Governing NSA/CSS Activities That Affect U.S. Persons (May 29, 2009), which includes the *Classified Annex to Department of Defense Procedures Under Executive Order 12,333*.

17. Attached hereto as **Exhibit N** is a true and correct copy of Central Intelligence Agency, “AR 2-2 Collection Rules” (January 2014). (“CIA 11”).

18. Attached hereto as **Exhibit O** is a true and correct copy of Central Intelligence Agency, *AR 2-2: Law and Policy Governing the Conduct of Intelligence Activities* (Dec. 23, 1987) (“CIA 1”).

19. Attached hereto as **Exhibit P** is a true and correct copy of *Supplemental Guidelines for Collection, Retention, and Dissemination of Foreign Intelligence* (Nov. 29, 2006) (“NSD 202-207”).

20. Attached hereto as **Exhibit Q** is a true and correct copy of *AR 2-2E Annex E: Memorandum of Understanding Concerning Overseas and Domestic Activities of the Central Intelligence Agency and Domestic Activities of the Central Intelligence Agency and the Federal Bureau of Investigation* (Dec. 23, 1987) (“CIA 4”).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of April, 2016, at New Haven, Connecticut.



Jonathan Manes